

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVONTE HAMILTON,

Plaintiff,

-against-

WESTCHESTER COUNTY, RAUL ULLOA,
MEDICAL DIRECTOR, JOSEPH K. SPANO,
WESTCHESTER COUNTY DEPARTMENT OF
CORRECTIONS COMMISSION, FRANCIS
DELGROSSO, ASSISTANT WARDEN, KARL
VOLLMER, ASSISTANT WARDEN, LEANDRO
DIAZ, ACTING DEPUTY COMMISSIONER,
CORRECT CARE SOLUTIONS, LLC,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 6/30/2021

No. 18-cv-8361 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge:

The Court is in receipt of the Second Circuit's Opinion dated June 30, 2021, in which it affirmed in part, vacated in part, and remanded to this Court. (ECF No. 50.) In part, the Second Circuit joined sister circuits in recognizing that an impairment lasting less than six months may qualify as an actionable disability under the ADA, and accordingly vacated the portion of this Court's Opinion and Order dated February 24, 2020 (ECF No. 47) dismissing Plaintiff's ADA claim. The Second Circuit only reached the question of whether the temporal duration of Plaintiff's impairment was a sufficient basis to dismiss his ADA claim and the affirmatively left it for this Court to address whether Plaintiff plausibly alleged a qualifying disability. In light of this outstanding legal issue, this Court anticipates that the parties may wish to engage in further motion practice.

Separately, Plaintiff's claims for violations of his Eighth and Fourteenth Amendment rights were dismissed without prejudice and were not subject to any appeal by Plaintiff. Also, in the aftermath of this Court's Opinion, Plaintiff obtained pro bono representation. (ECF No. 48.) In light of Plaintiff's representation by pro bono counsel, and the Court's prior grant of leave for him to amend his complaint, the Court anticipates that Plaintiff (whether assisted by counsel or in a pro se capacity) will wish to amend his Complaint.

In order to avoid duplicative efforts and inefficient sequencing of filings, it seems sensible to first permit Plaintiff to amend his complaint, and then subsequently set a briefing schedule for any non-duplicative dispositive motion that Defendants may wish to bring. To that end, the Court requests that the parties jointly file a written status report to this Court **on or before July 2, 2021**, establishing the following:

1. Whether pro bono counsel will continue to represent Plaintiff;¹
2. Whether Plaintiff intends to amend his complaint and, if so, whether he will require additional time beyond August 2, 2021 to do so; and
3. Whether, in the event Plaintiff is not filing an Amended Complaint, Defendants intend to move to dismiss Plaintiff's ADA claim on the grounds that he has not plausibly alleged a qualifying disability.

In the event that pro bono counsel is no longer representing Plaintiff, the Court directs pro bono counsel to mail a copy of this Order to Plaintiff at his address listed on ECF and to show proof of service on the docket.

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¹ The notice of appearance of pro bono counsel notes that counsel was making an appearance "for the purpose of his appeal." (ECF No. 48.) Accordingly, it is unclear to this Court whether the representation is limited to Plaintiff's appeal or whether pro bono counsel intends to continue representing Plaintiff.

The Clerk of the Court is kindly directed to reopen this case.

Dated: June 30, 2021
White Plains, New York

SO ORDERED:



NELSON S. ROMÁN
United States District Judge